

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PETE N. CAMARGO,

Plaintiff,

vs.

JESSIE ROTNER, *et al.*,

Defendants.

Case No. 11cv2955 DMS (PCL)

**ORDER ADOPTING IN PART
REPORT AND RECOMMENDATION**

Plaintiff Pete N. Camargo, a state prisoner proceeding *pro se*, filed an action pursuant to 42 U.S.C. Section 1983 alleging violation of his constitutional rights. He claims two Brawley Police Department officers used excessive force when they arrested him. The case was referred to United States Magistrate Judge Peter C. Lewis for a report and recommendation in accordance with 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.3.

On June 26, 2012, the motion to dismiss filed by the Brawley Police Department (“Brawley”) was granted. Plaintiff was granted leave to file an amended complaint no later than August 10, 2012 and allege Brawley’s policies and customs which caused the alleged constitutional violation, as required by *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978). (Docket no. 44.) As Plaintiff did not file an amended complaint, the claims asserted against Brawley were dismissed with prejudice on November 9, 2012. (Docket no. 56.) As to the claims asserted against the remaining two Defendants, the Magistrate Judge set an early neutral evaluation conference. (Docket no. 57.) Although Plaintiff was aware of the conference, he did not appear. (See Docket no. 59.) The

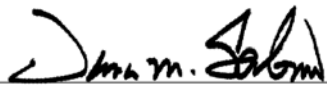
1 Magistrate Judge issued an order to show cause why sanctions should not be imposed and the case
 2 dismissed for failure to prosecute the case for the preceding eight months and failure to appear at the
 3 early neutral evaluation conference. (*Id.*) Plaintiff did not file a written response and did not appear
 4 at the order to show cause hearing. On May 7, 2013, the Magistrate Judge issued a report and
 5 recommendation recommending to dismiss the case for failure to prosecute pursuant to Federal Rule
 6 of Civil Procedure 41(b). Plaintiff has not filed any objections.

7 A district judge "may accept, reject, or modify the recommended disposition" on a dispositive
 8 matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.
 9 Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of
 10 those portions of the [report and recommendation] to which objection is made." 28 U.S.C. §
 11 636(b)(1). When no objections are filed, the *de novo* review is waived. Section 636(b)(1) does not
 12 require review by the district court under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50
 13 (1985). The "statute makes it clear that the district judge must review the magistrate judge's findings
 14 and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*,
 15 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in the original); *see Schmidt v. Johnstone*,
 16 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003).

17 In the absence of any objections, the Report and Recommendation is **ADOPTED**. Plaintiff's
 18 claims against Defendants Jesse Rotner and Torray Scales are **DISMISSED WITHOUT**
 19 **PREJUDICE** for failure to prosecute.

20 **IT IS SO ORDERED.**

21
 22 DATED: July 1, 2013

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 25 HON. DANA M. SABRAW
 26 United States District Judge
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